

# Values and State Control of Migrants: The Case of Canada

by Howard Adelman

## Introduction

What are the values that inform states when admitting migrants into membership in a nation-state? What values ought to inform such admissions? This paper will examine the values that inform Canadian immigration policy, especially focussing on policy applied to people forced to migrate. This category of persons are generally referred to as refugees.

In this consideration, a set of meta-values were at work both in the introduction of the most recent laws in Canada on this subject and the studies and white papers behind those laws as well as among academics called to study these laws. Alex Schmid viewed the basic problem to be a fragmented migration regime which was open to abuse because the principles on which the regime was based were neither clear, consistent, just or equitable from either the point of view of the migrant or the host society.<sup>1</sup> In the News release accompanying the introduction of Canada's new citizenship act (Ottawa 7 December 1998), it stated that, "Canada intends to first of all honour its great humanitarian tradition and apply the principles of justice and fairness from birth." In the Canadian explanation for introducing Bill C-63 (1998), a new act with respect to Canadian citizenship, the new laws are given the following justification. "(T)he current Act contains inconsistencies and...some fundamental provisions are unclear and open to interpretation by the courts and to abuse from people seeking Canadian citizenship for the numerous advantages it provides." (p. 1) The explanation and rationale for the Act seems to echo the concerns of the academics.

In formal terms, the values are consistency and clarity for interpretive purposes for both the academic analyst and the state bureaucracy. In ethical terms, the prime values are equity and fairness for the academic analyst. However, for the state bureaucrat and policy maker in Canada, the overall value was not equity or fairness - whatever the public relations spin - but "strengthening the value of Canadian citizenship." (*Citizenship of Canada Act*, 1 ) Equity or fairness, as well as humanitarianism, were qualifications in the application of the principle of adherence to a core of Canadian values.

This paper will examine three documents - new Canadian Citizenship Act, the announcement and rationale for the 1999 immigration levels and the study of the refugee regime prepared by an independent commission for the government - to analyze the values which inform Canadian policy in dealing with forced migrants. Responses to those documents will be considered as well.

## Canadian Values and Admission to Membership in the Body Politic

Only those with a genuine attachment to Canada were given access to membership in the Canadian polity and were allowed to retain such membership. Thus, a child born abroad to a second generation Canadian would not be allowed to claim Canadian citizenship except if stateless. (p. 3; C-63, 11) On the other hand, the distinction between adopted children and natural born children abroad was eliminated in accordance with the principle of fairness in treating adopted and natural children equitably. Thus the principle of equity limited and qualified the application of the value of the attachment to Canada for children born abroad or adopted abroad were considered as equals whatever differences in their psychological attachment to Canada.

An attachment to Canada as a value was also evidenced by other provisions of the Act. Three prerequisites were introduced in order to acquire Canadian citizenship - a residency requirement, a language requirement and a requirement to have some knowledge of Canada.<sup>2</sup> Citizenship judges were given a more activist role in promoting the rights and responsibilities of citizenship at the same time as their role as decision makers in determining citizenship was reduced as the criteria were standardized and quantified in the name of equity. Thirdly, a new citizenship oath was introduced which made explicit a core set of values to which new Canadians were expected to subscribe.

*From this day forward, I pledge my loyalty and allegiance to Canada and Her Majesty Elizabeth the Second, Queen of Canada. I promise to respect our country's rights and freedoms, to defend our democratic values, to faithfully observe our laws and fulfil my duties and obligations as a Canadian citizen.*

New Canadians were not expected just to be loyal to their new state, but their state as a constitutional democracy led by a monarch as head of state. More importantly, they were to adhere to the core values of the state - the rule of law and the charter of rights and freedoms. Further, in the name of "public interest," though intended to be exceptional in its application, prospective members of the polity could be refused citizenship if admission "would offend ordinary Canadians."<sup>3</sup> The usual provisions of rejecting citizenship for those who have committed crimes abroad or who are deemed to be security threats to Canada are included in the new act. (clauses 28 and 23 respectively). At the same time, those who acquired citizenship through the use of a false identity or by withholding knowledge of a criminal offence committed by themselves or who used fraud to obtain citizenship could have their citizenship revoked.<sup>4</sup> On the other hand, exceptions were also made to prevent revoking citizenship or for the immediate granting of citizenship to those who had made a contribution to Canada and its values or on the basis of compassion or undue hardship.<sup>5</sup>

In other words, a prime value dominated the provision or revocation of citizenship - service and loyalty to Canada and its values - while issues of equity and compassionate modified the application of those principles.

## Canadian Migration Policy

The Immigration Plan for 1999 echoed the 1998 plan and those of previous years. *Canada - A Welcoming Land* set out plans based on receiving 177,900 to 195,700 immigrants and 22,100 to 29,300 refugees. The values set to determine these levels are twofold with respect to regular migrants - Canadian economic needs and family reunification within the context of the Canadian ability to integrate newcomers. With respect to refugees, the basis is considered to be the Canadian humanitarian tradition.

In the breakdown of immigration figures, economic classes (100,200 - 111,200 skilled workers and 17,700 - 19,700 business migrants) constitute two-thirds of the overall 117,900 to 195,700 total immigration figure in the projection. The actual intake represented a smaller percentage because a number of those who obtained visas to come to Canada as economic migrants (15,000) decided not to come. The balance is made up of immigrants who come based on family reunification (38,000 to 41,000 spouses, fiancé(e)s and children and 15,500 - 17,300 parents and grandchildren). This is a reversal of the position when family reunification numbers constituted over 50% of migration totals. (In 1995, the family class totaled 77,307 versus 53,000-58,000 for 1999.) This change was made possible by the greater restriction of access for parents.

The refugee category was made up of 7,300 government assisted refugees, 2,800-4,000 privately sponsored refugees, 10,000 to 15,000 refugees landed in Canada and 2,000 to 3,000 dependents of such refugees landed from abroad for a total of 22,100 to 29,300 refugees. In the privately sponsored (2200 versus a range of 2800 to 4000) category, the numbers fell almost 25% below the minimum target, while in the refugee category of those landed within the country, the numbers were only slightly below the minimum target (11200 versus 12,000). In the case and refugees landed in Canada, the actual minimum targets were not even met. One of the interesting factors in assessing these figures is to note that in the immigration field, the intake for Quebec, the only province of Canada with independent responsibility for selection, is only about 14% of the total projected immigration intake into Canada. The refugee intake for Quebec, by contrast, is one-third of the Canadian total if the minimum planned projected intake of refugees is reached.

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<sup>1</sup> Cf. Alex Schmid, "The Basic Problem and the Basic Question," p. 1.

<sup>2</sup> Bill C-63, clause 6, made the following conditions for acquiring citizenship:

- a) - continuing residence for 1095 days in 5 years or 60% of the time. A person who "has, during the five years immediately before applying for citizenship, been a permanent resident residing in Canada for at least 1095 days." [6. (1) (b)];
- b) an adequate knowledge of one of the official languages of Canada [6. (1) (c)];
- c) "has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship and is able to communicate that knowledge in one of the official languages of Canada without the assistance of an interpreter ." [6.3] Note that all three of these requirements could be waived on compassionate grounds [6. 3] or mental disability.

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<sup>3</sup> Clause 21. (1) of Bill C-63 provides that, "If the Minister is satisfied that there are reasonable grounds to believe that it is not in the public interest for a person to become a citizen, the Minister may submit a report to the Governor in Council recommending that the person not be granted citizenship or be allowed to take the oath of citizenship." This provision is not subject to Appeal of any kind (22. (3) and overrules any other Act of Parliament.

<sup>4</sup> Clauses 16. (1) and (3) provide for the revocation of citizenship. (3) "For the purposes of this section, a person is deemed to have obtained or resumed citizenship by false representation or fraud or by concealing material circumstances if the person was admitted to Canada for permanent residence by false representation or fraud or by concealing material circumstances and, because of that admission, the person subsequently obtained or resumed citizenship," such determination to be made on "a balance of probabilities".[(17 (1) (b))]. A subsequent clause allowed the revocation of citizenship when such citizenship was acquired "by using a false identity."[(18. (1))]

<sup>5</sup> Clause 9 provided that, "In order to alleviate a situation of special and unusual hardship or to reward services of an exceptional value to Canada, the Governor in Council may, after being informed by the Minister of the situation or the services, direct the Minister to grant citizenship, without delay, to a person." 15. (2) provides that if there are compassionate grounds, the Minister may waive the conditions for the renunciation of citizenship.